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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND PLUMBING,  
INC., individually and on behalf of all others  
similarly situated,

Plaintiff,

vs.

FIRST STANDARD FINANCIAL  
COMPANY, LLC.; FIRST STANDARD  
FINANCE COMPANY, LLC.; and DOES 1  
through 10, inclusive, and each of them,

Defendants.

Case No.: 3:18-cv-05003-JD

**PLAINTIFF'S FIRST AMENDED CLASS  
ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff, ABANTE ROOTER AND PLUMBING, INC., ("Plaintiff"), individually and  
on behalf of all others similarly situated, alleges the following upon information and belief  
based upon personal knowledge:

**NATURE OF THE CASE**

1. Plaintiff brings this action individually and on behalf of all others similarly  
situated seeking damages and any other available legal or equitable remedies resulting from the  
illegal actions of FIRST STANDARD FINANCIAL COMPANY LLC and FIRST  
STANDARD FINANCE COMPANY LLC ("Defendants"), in negligently, knowingly, and/or  
willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone

Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

### **JURISDICTION & VENUE**

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a corporation licensed in New York, doing business within and throughout California. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1391(b) and because Defendant does business within the State of California and Plaintiff resides within the County of Alameda.

### **PARTIES**

4. Plaintiff, ABANTE ROOTER AND PLUMBING, INC. (“Plaintiff”), is a corporation of the State of California, whose principal place of business is in the county of Alameda and is a “person” as defined by 47 U.S.C. § 153 (39).

5. Defendant, FIRST STANDARD FINANCIAL COMPANY LLC (“Defendant”) is a financial services company, and is a “person” as defined by 47 U.S.C. § 153 (39).

6. Defendant FIRST STANDARD FINANCIAL COMPANY, LLC is a New York company, with its principal place of business registered with the New York Secretary of state at 40 Wall Street, 28th floor, New York, New York, 10005.

7. Defendant, FIRST STANDARD FINANCE COMPANY LLC (“Defendant”) is a financial services company, and is a “person” as defined by 47 U.S.C. § 153 (39).

8. Defendant FIRST STANDARD FINANCE COMPANY, LLC is a New York company, with its principal place of business registered with the New York Secretary of state at 40 Wall Street, 28th floor, New York, New York, 10005. Defendant FIRST STANDARD

1 FINANCE COMPANY, LLC is registered and authorized to do business in California as  
2 STANDARD FINANCING.

3 9. Plaintiff is informed and believes, and based thereon alleges that Defendants  
4 FIRST STANDARD FINANCIAL COMPANY, LLC and FIRST STANDARD FINANCE  
5 COMPANY, LLC are affiliates, owned and operated as a joint enterprise, operating for the  
6 purpose of soliciting services by the same individuals and corporate entities.

7 10. The above named Defendants, and their subsidiaries and agents, are collectively  
8 referred to as “Defendants.” The true names and capacities of the Defendants sued herein as  
9 DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who  
10 therefore sues such Defendants by fictitious names. Each of the Defendants designated herein  
11 as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of  
12 Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants  
13 when such identities become known.

14 11. Plaintiff is informed and believes that at all relevant times, each and every  
15 Defendant was acting as an agent and/or employee of each of the other Defendants and was  
16 acting within the course and scope of said agency and/or employment with the full knowledge  
17 and consent of each of the other Defendants. Plaintiff is informed and believes that each of the  
18 acts and/or omissions complained of herein was made known to, and ratified by, each of the  
19 other Defendants.

### 20 **FACTUAL ALLEGATIONS**

21 12. Beginning in or around April, 2018, and continuing through July of 2018,  
22 Defendants contacted Plaintiff on Plaintiff’s cellular telephone numbers ending in -7511, -  
23 1080, -5154, and -7447 in an attempt to solicit Plaintiff to purchase services from “Standard  
24 Financing.”

25 13. Plaintiff is informed and believes, and based thereon alleges

26 14. Defendant used an “automatic telephone dialing system” as defined by 47  
27 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to solicit its services.

28 15. Defendant contacted or attempted to contact Plaintiff from telephone numbers

1 belonging to Defendant, including without limitation: (646) 880-8585, (646) 762-7357, and  
2 (347) 594-5609.

3 16. Defendant's calls constituted calls that were not for emergency purposes as  
4 defined by 47 U.S.C. § 227(b)(1)(A).

5 17. During all relevant times, Defendant did not possess Plaintiff's "prior express  
6 consent" to receive calls using an automatic telephone dialing system or an artificial or  
7 prerecorded voice on its cellular telephones pursuant to 47 U.S.C. § 227(b)(1)(A).

8 18. Further, three of Plaintiff's cellular telephone numbers, ending in -1080, -7511,  
9 and -5154, were added to the National Do-Not-Call Registry on or about November 12, 2014,  
10 August 27, 2009 and February 21, 2007, well over thirty (30) days prior to Defendant's initial  
11 calls to Plaintiff.

12 19. In addition, Plaintiff requested numerous times that Defendant put its cellular  
13 numbers on Defendant's internal Do-Not-Call list. Despite such requests, Defendant continued  
14 to call Plaintiff's cellular telephones.

15 20. Defendant placed multiple calls soliciting its business to Plaintiff on its cellular  
16 telephones beginning on or about April of 2018 and continuing until on or about July 18, 2018.

17 21. Such calls constitute solicitation calls pursuant to 47 C.F.R. § 64.1200(c)(2) as  
18 they were attempts to promote or sell Defendant's services.

19 22. Plaintiff received numerous solicitation calls from Defendant within a 12-month  
20 period.

21 23. Defendant continued to call Plaintiff in an attempt to solicit its services and in  
22 violation of the National Do-Not-Call provisions of the TCPA.

23 24. Upon information and belief, and based on Plaintiff's experiences of being  
24 called by Defendant after being on the National Do-Not-Call list for several years prior to  
25 Defendant's initial call, and at all relevant times, Defendant failed to establish and implement  
26 reasonable practices and procedures to effectively prevent telephone solicitations in violation of  
27 the regulations prescribed under 47 U.S.C. § 227(c)(5).

28 ///

**CLASS ALLEGATIONS**

25. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the three proposed classes (hereafter, jointly, “The Classes”).

26. The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from or on behalf of “Standard Financing” to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

27. The class concerning the ATDS claim for revocation of consent, to the extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from or on behalf of “Standard Financing” to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had revoked any prior consent to receive such calls prior to the calls within the four years prior to the filing of this Complaint

28. The class concerning the National Do-Not-Call violation (hereafter “The DNC Class”) is defined as follows:

All persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who had not granted Defendant prior express consent nor had a prior established business relationship, who received more than one call made by or on behalf of Defendant that promoted Defendant’s products or services, within any twelve-month period, within four years prior to the filing of the complaint.

29. Plaintiff represents, and is a member of, The ATDS Class, consisting of all persons within the United States who received any solicitation telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing

1 system or an artificial or prerecorded voice and such person had not previously not provided  
2 their cellular telephone number to Defendant within the four years prior to the filing of this  
3 Complaint.

4 30. Plaintiff represents, and is a member of, The ATDS Revocation Class,  
5 consisting of all persons within the United States who received any solicitation/telemarketing  
6 calls from Defendant to paid person's cellular telephone made through the use of any automatic  
7 telephone dialing system or an artificial or prerecorded voice and such person had revoked any  
8 prior express consent to receive such calls prior to the calls within the four years prior to the  
9 filing of this Complaint.

10 31. Plaintiff represents, and is a member of, The DNC Class, consisting of all  
11 persons within the United States registered on the National Do-Not-Call Registry for at least 30  
12 days, who had not granted Defendant prior express consent nor had a prior established business  
13 relationship, who received more than one call made by or on behalf of Defendant that promoted  
14 Defendant's products or services, within any twelve-month period, within four years prior to  
15 the filing of the complaint.

16 32. Defendant, its employees, and agents are excluded from The Classes. Plaintiff  
17 does not know the number of members in The Classes, but believes the Classes members  
18 number in the thousands, if not more. Thus, this matter should be certified as a Class Action to  
19 assist in the expeditious litigation of the matter.

20 33. The Classes are so numerous that the individual joinder of all of its members is  
21 impractical. While the exact number and identities of The Classes members are unknown to  
22 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is  
23 informed and believes and thereon alleges that The Classes includes thousands of members.  
24 Plaintiff alleges that The Classes members may be ascertained by the records maintained by  
25 Defendant.

26 34. Plaintiff and members of The ATDS Class were harmed by the acts of  
27 Defendant in at least one of the following ways: Defendant illegally contacted Plaintiff and  
28 ATDS Class members via their cellular telephones thereby causing Plaintiff and ATDS Class

1 and ATDS Revocation Class members to incur certain charges or reduced telephone time for  
2 which Plaintiff and ATDS Class and ATDS Revocation Class members had previously paid by  
3 having to retrieve or administer messages left by Defendant during those illegal calls, and  
4 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class members.

5 35. Common questions of fact and law exist as to all members of The ATDS Class  
6 which predominate over any questions affecting only individual members of The ATDS Class.  
7 These common legal and factual questions, which do not vary between ATDS Class members,  
8 and which may be determined without reference to the individual circumstances of any ATDS  
9 Class members, include, but are not limited to, the following:

- 10 a. Whether, within the four years prior to the filing of this Complaint,  
11 Defendant made any telemarketing/solicitation call (other than a call  
12 made for emergency purposes or made with the prior express consent of  
13 the called party) to a ATDS Class member using any automatic  
14 telephone dialing system or any artificial or prerecorded voice to any  
15 telephone number assigned to a cellular telephone service;
- 16 b. Whether Plaintiff and the ATDS Class members were damaged thereby,  
17 and the extent of damages for such violation; and
- 18 c. Whether Defendant should be enjoined from engaging in such conduct in  
19 the future.

20 36. As a person that received numerous telemarketing/solicitation calls from  
21 Defendant using an automatic telephone dialing system or an artificial or prerecorded voice,  
22 without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The  
23 ATDS Class.

24 37. Common questions of fact and law exist as to all members of The ATDS  
25 Revocation Class which predominate over any questions affecting only individual members of  
26 The ATDS Revocation Class. These common legal and factual questions, which do not vary  
27 between ATDS Revocation Class members, and which may be determined without reference to  
28 the individual circumstances of any ATDS Revocation Class members, include, but are not

limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant made any telemarketing/solicitation call (other than a call made for emergency purposes or made with the prior express consent of the called party) to an ATDS Revocation Class member, who had revoked any prior express consent to be called using an ATDS, using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;
- b. Whether Plaintiff and the ATDS Revocation Class members were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant and their agents should be enjoined from engaging in such conduct in the future.

38. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff is asserting claims that are typical of The ATDS Revocation Class.

39. Plaintiff and members of The DNC Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and DNC Class members via their telephones for solicitation purposes, thereby invading the privacy of said Plaintiff and the DNC Class members whose telephone numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class members were damaged thereby.

40. Common questions of fact and law exist as to all members of The DNC Class which predominate over any questions affecting only individual members of The DNC Class. These common legal and factual questions, which do not vary between DNC Class members, and which may be determined without reference to the individual circumstances of any DNC Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant or its agents placed more than one solicitation call to the



1 members of the DNC Class whose telephone numbers were on the  
2 National Do-Not-Call Registry and who had not granted prior express  
3 consent to Defendant and did not have an established business  
4 relationship with Defendant;

5 b. Whether Defendant obtained prior express written consent to place  
6 solicitation calls to Plaintiff or the DNC Class members' telephones;

7 c. Whether Plaintiff and the DNC Class member were damaged thereby,  
8 and the extent of damages for such violation; and

9 d. Whether Defendant and its agents should be enjoined from engaging in  
10 such conduct in the future.

11 41. As a person that received numerous solicitation calls from Defendant within a  
12 12-month period, who had not granted Defendant prior express consent and did not have an  
13 established business relationship with Defendant, Plaintiff is asserting claims that are typical of  
14 the DNC Class.

15 42. Plaintiff will fairly and adequately protect the interests of the members of The  
16 Classes. Plaintiff has retained attorneys experienced in the prosecution of class actions.

17 43. A class action is superior to other available methods of fair and efficient  
18 adjudication of this controversy, since individual litigation of the claims of all Classes members  
19 is impracticable. Even if every Classes member could afford individual litigation, the court  
20 system could not. It would be unduly burdensome to the courts in which individual litigation  
21 of numerous issues would proceed. Individualized litigation would also present the potential  
22 for varying, inconsistent, or contradictory judgments and would magnify the delay and expense  
23 to all parties and to the court system resulting from multiple trials of the same complex factual  
24 issues. By contrast, the conduct of this action as a class action presents fewer management  
25 difficulties, conserves the resources of the parties and of the court system, and protects the  
26 rights of each Classes member.

27 44. The prosecution of separate actions by individual Classes members would create  
28 a risk of adjudications with respect to them that would, as a practical matter, be dispositive of

1 the interests of the other Classes members not parties to such adjudications or that would  
2 substantially impair or impede the ability of such non-party Class members to protect their  
3 interests.

4 45. Defendant has acted or refused to act in respects generally applicable to The  
5 Classes, thereby making appropriate final and injunctive relief with regard to the members of  
6 the Classes as a whole.

7 **FIRST CAUSE OF ACTION**

8 **Negligent Violations of the Telephone Consumer Protection Act**

9 **47 U.S.C. §227(b).**

10 **On Behalf of the ATDS Class and ATDS Revocation Class**

11 46. Plaintiff repeats and incorporates by reference into this cause of action each and  
12 every allegation set forth above.

13 47. The foregoing acts and omissions of Defendant constitute numerous and  
14 multiple negligent violations of the TCPA, including but not limited to each and every one of  
15 the above cited provisions of 47 U.S.C. § 227(b), and in particular 47 U.S.C. § 227 (b)(1)(A).

16 48. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b), Plaintiff  
17 and the Class Members are entitled an award of \$500.00 in statutory damages, for each and  
18 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

19 49. Plaintiff and the ATDS Class and the ATDS Revocation Class members are also  
20 entitled to and seek injunctive relief prohibiting such conduct in the future.

21 **SECOND CAUSE OF ACTION**

22 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

23 **47 U.S.C. §227(b)**

24 **On Behalf of the ATDS Class and the ATDS Revocation Class**

25 50. Plaintiff repeats and incorporates by reference into this cause of action each and  
26 every allegation set forth above.

27 51. The foregoing acts and omissions of Defendant constitute numerous and  
28 multiple knowing and/or willful violations of the TCPA, including but not limited to each and

every one of the above cited provisions of 47 U.S.C. § 227(b), and in particular 47 U.S.C. § 227 (b)(1)(A).

52. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiff and the ATDS Class and the ATDS Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

53. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

### **THIRD CAUSE OF ACTION**

#### **Negligent Violations of the Telephone Consumer Protection Act**

#### **47 U.S.C. §227(c)**

#### **On Behalf of the DNC Class**

54. Plaintiff repeats and incorporates by reference into this cause of action each and every allegation set forth above.

55. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(c), and in particular 47 U.S.C. § 227 (c)(5).

56. As a result of Defendant's negligent violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

57. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

### **FOURTH CAUSE OF ACTION**

#### **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

#### **47 U.S.C. §227 et seq.**

#### **On Behalf of the DNC Class**

58. Plaintiff repeats and incorporates by reference into this cause of action each and every allegation set forth above.

59. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(c), in particular 47 U.S.C. § 227(c)(5).

60. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

61. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

### **FIRST CAUSE OF ACTION**

#### **Negligent Violations of the Telephone Consumer Protection Act**

#### **47 U.S.C. §227(b)**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

### **SECOND CAUSE OF ACTION**

#### **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

#### **47 U.S.C. §227(b)**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and the ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B)

and 47 U.S.C. §227(b)(3)(C).

- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

### **THIRD CAUSE OF ACTION**

#### **Negligent Violations of the Telephone Consumer Protection Act**

##### **47 U.S.C. §227(c)**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

### **FOURTH CAUSE OF ACTION**

#### **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

##### **47 U.S.C. §227(c)**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

### **JURY TRIAL**

62. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

1 Respectfully Submitted this 7th Day of October, 2019.

2 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

3 By: /s/ Todd M. Friedman  
4 Todd M. Friedman  
5 Law Offices of Todd M. Friedman  
6 Attorney for Plaintiff  
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**CERTIFICATE OF SERVICE**

Filed electronically on this 7th Day of October, 2019, with:

United States District Court CM/ECF system

Notification sent electronically on this 7th Day of October, 2019, to:

Honorable James Donato

United States District Court

Northern District of California

And all Counsel of Record as Recorded on the Electronic Service List.

This 7th Day of October, 2019

s/Todd M. Friedman, Esq.

Todd M. Friedman